IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8894 of 1992

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW PRINT PLASTIC CO LTD - Petitioner(s)

Versus

MUNILAL B TRIPATHI - Respondent(s)

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Appearance :

M/S TRIVEDI & GUPTA for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

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1.0 The petitioner Company has challenged the award dated 02.04.1987 passed by the Labour Court, Navsari, in

Reference (LCN) No. 84 of 1984 and the order dated 10.01.1992 passed by the Labour Court, Valsad, in Misc. Application No. 7 of 1990, whereby the petitioner was directed to reinstate the respondent with full back wages.

2.0 The brief facts of the case are that the respondent herein was engaged as a Watchman in the factory of the petitioner. It is the case of the petitioner that the respondent had voluntarily abandoned the services of the petitioner w.e.f 21.09.1983 and had not reported for duty. However, the respondent raised a dispute, which, ultimately, culminated into a reference being Reference (LCN) No. 84 of 1984 before the Labour Court.

2.1 The Labour Court by award dated 02.04.1987 directed the petitioner to reinstate the respondent on his original post with full back wages. On receipt of the said award, the petitioner Company preferred an application being Misc. Application No. 7 of 1987 praying to quash and set aside the award. The said application was also dismissed by the Labour Court vide order dated 10.01.1992. Hence, this petition.

3.0 While admitting the matter on 30.01.1993, this Court passed the following order;

> “.... Learned counsel for the petitioner states that at the time when the Misc. Application No. 7/1990 for setting aside the award was submitted and was being heard, the workman was already reinstated in service. Thus, the direction as regards reinstatement in service is not required to be stayed. As far as the direction with regard to payment of backwages is concerned, in our opinion it would cause untold and immeasurable hardship to the respondent workman if the direction with regard to payment of backwages is stayed in its entirety. Be it noted that the dispute has been raised in the year 1983. Reference is of the year 1984. It has been decided on April 2, 1987 and the aplication for setting aside the award has been decided on January 10, 1992. The petition is filed on September 1, 1992 and the objections have been removed on November 9, 1992. Thus, it is evident that this Court has been moved for admission of the matter after considerable delay. The respondent workman is lowly paid employee. The respondent workman was working as a watchman, whose wage as disclosed in the Award is Rs.400/- per month only. It becomes difficult to imagine as to how the workman would have been able to maintain himself and his family members in meagre amount of Rs.400/- per month even when he would have received the amount of wages. After protracted litigation and after inordinate delay in filing the petition and in moving this Court, if direction as regards payment of backwages is stayed in its entirety, it would work further hardship upon the respondent workman. As far as direction with regard to payment of backwages s concerned, it is as good as money decree. We do not see any reason as to why this direction should be stayed in its entirety. Having regard to overall facts and circumstances of the case, the direction as regards payment of backwages is stayed on condition that the entire amount of backwages as per the direction given by the

> Labour Court is deposited in this Court on or before February 26, 1993, it shall carry interest at the rate of 18 % per annum till the amount is deposited in this Court, 50 % of the amount shall be paid to the respondent workman. Balance of 50 % shall be invested by the Office of the High Court in fixed deposit, initially for a period of two years. If the entire amount is not deposited by the aforesaid date, interim relief herein granted, shall stand automatically vacated."

4.0 In above view of the matter, the direction of the Labour Court qua granting reinstatement in service to the respondent is not considered. The only question which is required to be considered by this Court is with regard to back wages. Since 50 % of the back wages is already withdrawn, the same shall be treated as ex-gratia payment and not as back wages. So far as the balance 50 % of the back wages is concerned, I am not inclined to grant the same in view of the principle laid down by the Apex Court in the following decisions.

4.1 In the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, it has been that a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2 In the case of General Manager, Haryana Roadways v.

Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the respondent cannot be said to be entitled for the balance 50 % of the back wages.

5.0 In the result, the petition is partly allowed. The impugned award of the Labour Court qua directing the petitioner to reinstate the respondent on his original post is confirmed. So far as the balance 50 % of the back wages is concerned, the same is quashed and set aside. Registry is directed to hand over the balance 50 % of the amount kept in Fixed Deposit, pursuant to the orders of this Court as aforesaid, to the petitioner along with interest as may be applicable. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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